

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10412 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAGUBHAI CHHITUBHAI CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner
Miss B.R.Gajjar, AGP, instructed by Mr D.A.Bambhania
for the respondents.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/05/96

ORAL JUDGEMENT

The petitioner, who is working as a Deputy Collector, seeks direction on the respondents to promote him as an Additional Collector (Ex-cadre) and not to keep his assessment for promotion in a sealed cover.

2. The petitioner was recruited as a Mamlatdar by order dated 16th April 1977 and later on promoted as a

Deputy Collector on 18th April, 1983 and posted as Deputy District Development Officer, Valsad. Thereafter, he worked as a Deputy Collector at various places in the State of Gujarat under the Revenue Department. Admittedly, the officers of the rank of Deputy Collectors in the Gujarat Administrative Service are considered for promotion in the higher pay scale of Rs.3500-5000. This is the scale of the ex cadre post of Additional Collector. The Departmental Promotion Committee considers the case of eligible Deputy Collectors on the basis of seniority and a select list is prepared as per the relevant criteria for giving the higher scale of Rs.3500-5000. The petitioner's case was accordingly considered to adjudge his suitability for appointment in the Ex-cadre post in the higher scale of Rs.3500-5000 in the meeting of the Selection Committee held in December, 1994. It appears that the petitioner was selected by the Selection Committee at the said meeting. However, when his turn came up for giving him actual Ex-cadre appointment in the higher scale in November, 1995, disciplinary proceedings were contemplated against him and he was, therefore, not given appointment in the post of Additional Collector (Ex-cadre) in the said higher scale. It appears that on 15th June, 1988, the petitioner had been given an office memo requiring his explanation as regards certain orders passed by him as Deputy Collector, Dahod for conversion of lands to old tenure. By that memo, a copy of which is attached at annexure 'E', the petitioner was called upon to show cause as to why departmental action should not be taken against him in respect of the irregularities in converting the lands to old tenure in 39 cases. The petitioner gave his detailed reply as per annexure 'F' to the petition on 19th September, 1988. Thereafter, nothing happened until 17th January 1995 when it is stated that the Government took a decision that the explanation tendered by the petitioner was not acceptable and that a regular departmental inquiry should be held against him. According to the respondents, since a conscious decision was taken to initiate disciplinary proceedings against the petitioner by the Government on 17.1.95, the Government was justified in view of the provisions of paragraph 7 of Resolution dated 23.9.81 to withhold his promotion when his turn came up for Ex-cadre appointment in the higher scale in November, 1995. Admittedly, five officers junior to the petitioner were given such Ex-cadre appointment to the higher scale on 30th November, 1995.

3. It is submitted on behalf of the petitioner that since the petitioner was already selected by the

Selection Committee which met in December, 1994 at a time when there was no conscious decision on record to initiate any departmental proceedings against the petitioner, there was no question of adopting the procedure of keeping the findings of the Selection Committee in a sealed envelope as envisaged in para 2 & 3 of the Government Resolution dated 23rd September, 1981. It was submitted that merely on the basis of the memo which was issued to the petitioner as far back as on 15th June, 1988 in respect of certain quasi judicial orders made by the petitioner as a Deputy Collector, to which a reply was sent by the petitioner on 19.9.88, the Selection Committee could not have adopted the sealed envelope procedure in respect of the petitioner. It was submitted that till the date of filing of this petition no disciplinary proceedings were initiated against the petitioner by serving charge-sheet and statement of allegations and therefore the petitioner's promotion could not have been withheld even by resort to paragraph 7 of the said resolution dated 23rd September, 1981. The Government counsel, on the other hand, contended that though the petitioner was selected by the Selection Committee in December, 1994, in view of the conscious decision of the Government to initiate disciplinary proceedings against the petitioner taken on 17th January 1995, the Government was justified in withholding his promotion in November 1995 at the time when he became due for such promotion. It is stated on behalf of the respondents that now on 29th March, 1996, the Competent Authority has issued charge-sheet against the petitioner. It was, therefore, submitted that the requirements of paragraph 7 of the said Resolution are now satisfied and the petitioner even though included in the select list in December, 1994 is not entitled to be promoted on the basis of his inclusion in the select list until he is completely exonerated of the charges against him.

4. Admittedly, the petitioner was selected by the Selection Committee in December 1994 for the Ex-cadre post in the higher scale. Therefore, there was absolutely no question of following the procedure laid down in paragraph 3 of the Resolution dated 23rd September 1981. The procedure prescribed in paragraph 3 for recording the findings as to suitability and the place in the select list of the concerned Government servant and separately keeping them in the sealed envelope is required to be followed in respect of categories enumerated in para (i) to (iii) of the said Resolution. In December 1994, when the Selection Committee prepared the select list, there were no disciplinary proceedings initiated against the petitioner

nor was any conscious decision taken for initiating the proceedings. Admittedly, conscious decision for initiating the proceedings was taken only on 17th January, 1995. Therefore, there was no occasion to adopt the sealed envelope procedure contemplated by paragraph 3 of the said Resolution in case of the petitioner. Admittedly, therefore, there was no sealed cover in which there could have been findings of the Selection Committee in case of the petitioner in respect of the select list prepared in December, 1994. It is, therefore, surprising that the respondents should have placed on record a sealed cover containing the findings of the Selection Committee which met on 7.2.96 i.e. during the pendency of this petition. The petitioner's case is to be viewed in the context of the selection made by the Selection Committee in December, 1994 and in that context, it is admitted on behalf of the respondents by their learned counsel that he was already in the select list. Therefore, there was no question of making any fresh findings regarding his suitability to be placed in a sealed cover by the Selection Committee which met on 7.2.96. This sealed cover is clearly prepared to frustrate the petition and it has absolutely no relevance to the matter when admittedly the petitioner was already included in the select list which was prepared in December, 1994. The sealed cover which is prepared on 7.2.96 and which is held to be irrelevant for the purpose of this petition is ordered to be returned to the learned Assistant Government Pleader and the same is returned in Court.

5. In paragraph 7 of the Resolution on which reliance was sought to be placed on behalf of the respondents to justify withholding of the petitioner's promotion, it is provided as under :

"7. A Government servant whose name is included in the select list but who is subsequently placed under suspension or against whom criminal proceedings/departmental proceedings have been initiated should not be promoted on the basis of his inclusion in the select list until he is completely exonerated of the charges against him. If the Government servant is completely exonerated of the charges, he will be promoted on the basis of his position in the select list, to the post which has been filled on a temporary basis pending disposal of the charges against him. If the exoneration is not complete, the question of his suitability for promotion will

have to be adjudged afresh as mentioned in para-5 above."

It will be noted from the above provision that promotion of a person who is included in the select list can be withheld on the ground that a departmental proceeding has been initiated against him. This expression is to be read in context of para 2(ii) of the Resolution which refers to the category where departmental proceedings are initiated which means where a charge sheet and the statement of allegations have been issued. To deny the benefit of promotion from the select list, departmental proceedings must be pending at the relevant time at a stage when charge-sheet has already been issued to the employee. This proposition is borne out from the decisions of the Supreme Court in Delhi Development Authority v. H.C.Khurana, JT 1993 (2) SC 695 and the Union of India & ors. v. K.V.Jankiraman & ors. JT 1991(3) SC 527 : 1991 (4) SCC 109. When the petitioner's turn came up for promotion from the select list in November, 1995, admittedly no charge-sheet and statement of allegations were issued on him. It, therefore, cannot be said that at the time when the petitioner's turn came for promotion from the select list, departmental proceedings had been initiated against him. Therefore, clearly at the relevant time there was no scope for invoking the provisions of paragraph 7 of the said Resolution for withholding the petitioner's promotion and supercede him by promoting his five juniors by notification dated 30th November, 1995.

6. The learned counsel for the respondent relying upon a decision of the Supreme Court in Union of India v. N.P.Dhamania, AIR 1995 SC 568 contended that the petitioner had no right to be promoted from the select list since a select list prepared by the Selection Committee was only recommendatory in nature and not binding on the appointing authority. The question of withholding of promotion of an employee included in the select list is to be viewed in light of paragraph 7 of the said Resolution which lays down specific guidelines and since no other reasons are given for differing from these guidelines for withholding the petitioner's promotion there would be no justification for a specious plea taken at a belated stage that the recommendations of the Selection Committee selecting the petitioner could be ignored by the Appointing Authority even though his case admittedly did not fall in para 7 of the Resolution. Even in N.P.Dhamania's case, the Supreme Court in terms held that reasons must be given if the Appointing Authority differs from the recommendation of the

Selection Committee to ward off any attack of arbitrariness.

7. It is clear that a mere proposal to initiate disciplinary proceedings would not attract the provisions of paragraph 7 of the said Resolution. Moreover, even when the proceedings have been initiated, that should be the position at the relevant time when the turn of the employee comes up for promotion from the select list. Therefore, since admittedly no chargesheet was issued at the relevant time on the petitioner, there was no scope for invoking the provisions of paragraph 7 of the said Resolution and withholding his promotion at the time when his juniors were promoted on 30.11.95.

8. Under the above circumstances, the respondents are required to consider the question of giving the petitioner higher scale in the Ex-cadre post in the light of the above interpretation of paragraph 7 of the Resolution. The concerned authorities of the respondents are, therefore, directed to consider the question of promoting the petitioner on the basis of the select list prepared in December 1994 on the footing that there was no departmental proceedings initiated against him at the relevant time when his promotion was due. Rule is made absolute accordingly with no order as to costs.
